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**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

March 2, 2016

David MacLennan, Cargill Chairman and Chief Executive Officer
Cargill, Incorporated
P.O. Box 9300
Minneapolis, MN
55440-9300

Dave Powers, Plant Manager
Cargill Inc. Nutrena Feed / Cargill Animal Nutrition
4344 S. El Dorado Street
Stockton, CA 95206

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Mr. MacLennan and Mr. Powers:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at Cargill Inc.'s industrial facility located at 4344 S. El Dorado Street in Stockton, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Joaquin River, the Sacramento-San Joaquin River Delta (the "Delta"), and other California waters. This letter is being sent to Cargill Inc., David MacLennan, and Dave Powers as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Cargill").

This letter addresses Cargill's unlawful discharge of pollutants from the Facility to Little John Creek, which flows in the San Joaquin River and then flows into the Delta. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more

stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") is 5S39I000172. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Cargill is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Cargill under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

On or about February 21, 1992, Cargill submitted a Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI") to the State Board. On or about May 12, 1997, Cargill submitted another NOI. On or about February 18, 2015, Cargill submitted an NOI to the State Board to comply with the 2015 Permit. In its NOIs, Cargill certifies that the Facility is classified under SIC codes 4221, 2047, and 2048. The Facility collects and discharges storm water from its 11-acre industrial site through at least five outfalls. On information and belief, CSPA alleges that all storm water discharges from the Facility contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur. The outfalls discharge to channels that flow into Little John Creek, which flows in the San Joaquin River and then flows into the Delta.

The Regional Board has identified beneficial uses of the Central Valley Region's waters and established water quality standards for the San Joaquin River and its tributaries, which include Little John Creek, in "The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin," generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf. The beneficial uses of these water include, among others, water contact recreation, non-contact water recreation, municipal and domestic water supply, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses

include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” Basin Plan at II-1.00 – II-2.00. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of Little John Creek, the San Joaquin River, and the Delta for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the San Joaquin River and its tributaries. It provides that “[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses.” *Id.* at III-5.00. It provides that “[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses.” *Id.* It provides that “[w]aters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at III-7.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.* The Basin Plan requires that “[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at III-9.00.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).¹ The following benchmarks have been established for pollutants discharged by Cargill: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; and oil and grease (“O&G”) – 15 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L and O&G – 15 mg/L. The 2015 Permit also establishes the following instantaneous NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and O&G – 25 mg/L.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit

Cargill has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the

¹ The Benchmark Values can be found at:
http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf and
<http://cwea.org/p3s/documents/multi-sectorrev.pdf> (Last accessed on March 1, 2016).

General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. See 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Cargill has discharged and continues to discharge storm water with unacceptable levels of TSS, pH, and potentially other pollutants in violation of the General Permit. Cargill's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained observations of pollutants in excess of narrative water quality standards established in the Basin Plan as well as outside of the parameters for pH. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration/ Conditions	Basin Plan Water Quality Objective	Outfall (as identified by the Facility)
11/20/2013	pH	6.2 s.u.	6.5 – 8.5 s.u.	All Collection Points
4/8/2015	Narrative	Cloudy	III-9.00 / III-5.00	West Outfall
3/11/2015	Narrative	Cloudy	III-9.00 / III-5.00	West Outfall
2/6/2015	Narrative	Cloudy	III-9.00 / III-5.00	West Outfall
12/15/2014	Narrative	Cloudy	III-9.00 / III-5.00	West Outfall
10/31/2014	Narrative	Cloudy	III-9.00 / III-5.00	West Outfall
2/6/2014	Narrative	Cloudiness	III-9.00 / III-5.00	South Discharge Point
11/29/2013	Narrative	Cloudiness	III-9.00 / III-5.00	South Discharge Point
4/13/2012	Narrative	Slightly murky	III-9.00 / III-5.00	All Discharge Points
3/23/2012	Narrative	Slightly murky	III-9.00 / III-5.00	All Discharge Points
10/6/2011	Narrative	Slightly cloudy	III-9.00 / III-5.00	All Discharge Points

The information in the above table reflects data gathered from Cargill's self-monitoring during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons. CSPA alleges that since March 2, 2011, and continuing through today, Cargill has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 s.u.
- Turbidity – Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. (Basin Plan at III-9.00)
- Color – Water shall be free of discoloration that causes nuisance or adversely affects beneficial uses. (Basin Plan at III-5.00)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value / NAL	Outfall (as identified by the Facility)
12/15/2014	Total Suspended Solids	230 mg/L	100 mg/L	All Discharge Points
12/2/2014	Total Suspended Solids	643 mg/L	100 mg/L	All Discharge Points
2/6/2014	Total Suspended Solids	221 mg/L	100 mg/L	All Discharge Points
11/28/2012	Total Suspended Solids	1800 mg/L	100 mg/L	All Discharge Points
12/5/2011	Total Suspended Solids	1100 mg/L	100 mg/L	All Discharge Points
10/6/2011	Total Suspended Solids	560 mg/L	100 mg/L	All Discharge Points
5/18/2011	Total Suspended Solids	180 mg/L	100 mg/L	All Discharge Points

The information in the above table reflects data gathered from Cargill's self-monitoring during the 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons. CSPA alleges that since at least March 2, 2011, Cargill has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NAL for TSS.

CSPA's investigation, including its review of Cargill's Storm Water Pollution Prevention Plan ("SWPPP"), Cargill's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable narrative water quality standards, the water quality standard for pH, and the EPA benchmark values and NAL for TSS, indicates that Cargill has not implemented BAT and BCT at the Facility for its discharges of TSS, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. In particular, Cargill's SWPPP indicates that "no storm water management practices are required at this time." Cargill was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Cargill is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since March 2, 2011, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Cargill has discharged storm water containing impermissible and unauthorized levels of TSS and pH in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.²

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of TSS, pH, and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions

² The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Stockton, approximately 2.6 miles from the Facility. The station is called "STOCKTON 3.2 SE CALIF" and the data was accessed via <http://www.ncdc.noaa.gov/cdo-web/search> (last accessed on March 2, 2016).

brought pursuant to the federal Clean Water Act, Cargill is subject to penalties for violations of the General Permit and the Act since March 2, 2011.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

i. Failure to Conduct Sampling and Analysis

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. See 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. See 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. See 1997 Permit, § B(5)(b). The 2015 Permit broadens this qualifying storm event definition by requiring that the storm water discharges be preceded by 48 hours without discharge from any drainage area in order to trigger the sampling requirement. See 2015 Permit, § XI(B)(1)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." See 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements.

As described in the Facility's Storm Water Pollution Prevention Plan, there are five discharge locations for the Facility – four discharge points which drain to the west of the

property and one that discharges to the south. Further, on information and belief, CSPA alleges that there are at least six discharge points which drain to the west of the property, for a total of seven storm water outfalls at the Facility. However, during the past five years, Cargill has only sampled and analyzed discharges from one storm water discharge location at the Facility. Cargill has reported the discharge location on its Annual Reports as "All Discharge Points," but has failed to provide any explanation as to what this means or how those samples were collected. Further, some of the laboratory reports attached to the Annual Reports refer to the sample location as the "West Discharge" but do not provide any specificity beyond that.

Thus, on information and belief, CSPA alleges that during each of the past five wet seasons, Cargill has failed to sample and analyze storm water discharges from six of its discharge locations at the Facility during each required sampling event. This results in at least 12 violations of the General Permit for each wet season resulting in at least 60 violations. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Cargill is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 2, 2011.

ii. Failure to Conduct Visual Observations

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make monthly visual observations of storm water discharges is continued in Section XI(A) of the 2015 Permit.

On information and belief, CSPA alleges that Cargill failed to conduct monthly visual observations of storm water discharges from six of its discharge locations during the 2014-2015, 2013-2014, 2011-2012, and 2010-2011 wet seasons, as Cargill made monthly visual observations for only one drainage area during each of those seasons.³ During the 2012-2013 wet season, Cargill only performed monthly set season visual observations at four of its drainage areas -- at points labeled "W2, W3, W4, and W5." This results in at least 178 violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Cargill is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 2, 2011.

³ CSPA notes that sometimes Cargill conducted observations at "all drainage locations," but failed to specify what this means.

C. Failure to Complete Annual Comprehensive Site Compliance Evaluation

Section B(14) of the 1997 Permit requires operators to submit an Annual Report to the Regional Board by July 1 of each year. The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CSFA indicates that Cargill has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide an explanation of the Facility's failure to take steps to reduce or prevent high levels of TSS observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § XI(3)(b). Further, the Facility's ACSCE Report for the 2014-2015 wet season was entirely blank. These examples of failures to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Cargill has consistently proposed minimal BMPs that failed to properly respond to EPA benchmark and narrative water quality standard exceedances, in violation of the General Permit.

CSFA puts Cargill on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. Cargill is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Cargill is subject to civil penalties for all violations of the CWA occurring since March 2, 2011.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated

with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)–A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(b). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5).

Despite these clear BMP requirements, Cargill has been conducting and continues to conduct industrial operations at the facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with Section X(D)(1) of the 2015 Permit. Specifically, the SWPPP fails to describe the responsibilities, duties, and activities of each of the team members; and fails to identify the procedures to identify alternate team members to implement the SWPPP when regularly assigned members are unavailable.

The SWPPP fails to comply with Section X(D)(2)(d) of the 2015 Permit by failing to document the Facility's scheduling operating hours.

The SWPPP fails to comply with the requirements of Section X(E) of the 2015 Permit. Specifically, the SWPPP map fails to include storm water drainage areas within the Facility boundary; the flow direction of each drainage area; and locations of storm water collection and conveyance systems, associated discharge locations, and direction of flow.

The SWPPP fails to comply with the requirements of Section X(G)(1)(a) of the 2015 Permit, failing to describe all industrial processes at the Facility.

The SWPPP fails to comply with the requirements of Section X(G)(1)(e) of the 2015 Permit. The SWPPP fails to contain an assessment of the non-storm water discharges ("NSWDs") at the Facility and a description of how all NSWDs have been eliminated. The SWPPP vaguely relies on an investigation for NSWDs that took place in 1992, and provides no description or documentation of that investigation. On information and belief, CSPA alleges that Cargill has failed to properly assess the Facility for NSWDs.

The SWPPP fails to comply with the requirements of Section X(G)(2) of the 2015 Permit. The SWPPP fails to a narrative assessment of all areas of industrial activity with potential industrial pollutant sources. Cargill has failed to identify where the minimum BMPs in different areas of the Facility will not adequately reduce the pollutants in the Facility's storm water dischargers and to identify advanced BMPs for those areas.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement and maintain the required minimum BMPs for material handling and waste management. The SWPPP fails to implement any advanced BMPs, specifically noting that "no storm water management practices are required at this time." The SWPPP fails to identify and justify each minimum BMP or applicable BMP not being implemented at the Facility because they do not reflect best industry practice considering BAT/BCT. The SWPPP fails to include a table summarizing each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented.

The SWPPP fails to comply with the requirements of Section X(I) of the 2015 Permit. The SWPPP fails to include a Monitoring implementation Plan that complies with the 2015 Permit. The SWPPP appears to be entirely void of a Monitoring Implementation Plan and all of the requirements thereof.

Most importantly, the Facility's storm water samples and discharge observations have consistently greatly exceeded EPA benchmarks, NALs, and water quality standards, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Cargill has failed to sufficiently update the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges.

CSPA puts Cargill on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CSPA will include additional violations as information and data become available. Cargill is subject to civil penalties for all violations of the CWA occurring since March 2, 2011.

III. Persons Responsible for the Violations.

CSPA puts Cargill Inc., David MacLennan, and Dave Powers on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Cargill Inc., David MacLennan, and Dave Powers on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of California Sportfishing Protection Alliance is as follows:

Ben Jennings, Executive Director
California Sportfishing Protection Alliance
3836 Rainier Avenue
Stockton, CA 95204
Tel. (209) 464-5067
dentakeep@me.com

V. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak
Michael R. Lozeau
Lozeau Drury LLP
410 12th Street, Suite 250

Cargill Inc., MacLennan, Powers
Cargill Inc. Nutrena Feed / Cargill Animal Nutrition
March 2, 2016
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Oakland, California 94607
Tel. (510) 836-4200
douglas@lozeaudrury.com
michael@lozeaudrury.com

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Cargill to a penalty of up to \$37,500 per day per violation for all violations. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(c) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against Cargill and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak
Lozeau Drury LLP
Attorneys for California Sportfishing Protection Alliance

cc via First-class mail: CT Corporation, 818 West Seventh St., Los Angeles, CA 90017
Agent of Service of Process for Cargill, Incorporated (C0211761)

SERVICE LIST – via certified mail

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 110
Sacramento, CA 95812-0100

Loretta Lynch, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105

Pamela C. Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

ATTACHMENT A
Rain Dates, Cargill Animal Nutrition, Stockton, CA

3/2/2011	11/18/2012	9/26/2014
3/14/2011	11/11/2012	11/1/2014
3/16/2011	11/29/2012	11/13/2014
3/19/2011	11/30/2012	11/20/2014
3/20/2011	12/1/2012	11/21/2014
3/21/2011	12/2/2012	11/23/2014
3/24/2011	12/3/2012	12/1/2014
3/25/2011	12/6/2012	12/2/2014
3/26/2011	12/12/2012	12/3/2014
3/27/2011	12/16/2012	12/4/2014
5/15/2011	12/22/2012	12/12/2014
5/17/2011	12/23/2012	12/15/2014
5/18/2011	12/24/2012	12/16/2014
6/2/2011	12/26/2012	12/17/2014
6/5/2011	1/6/2013	12/20/2014
6/6/2011	2/20/2013	2/7/2015
6/29/2011	3/6/2013	2/8/2015
10/5/2011	3/20/2013	2/9/2015
10/6/2011	3/31/2013	3/2/2015
11/6/2011	4/1/2013	4/7/2015
11/12/2011	4/4/2013	4/8/2015
11/20/2011	4/5/2013	4/25/2015
12/16/2011	6/25/2013	6/11/2015
1/20/2012	9/22/2013	10/1/2015
1/21/2012	11/20/2013	11/2/2015
1/23/2012	11/21/2013	11/3/2015
1/24/2012	12/7/2013	11/9/2015
2/13/2012	2/3/2014	11/10/2015
2/14/2012	2/6/2014	11/15/2015
3/1/2012	2/8/2014	11/25/2015
3/14/2012	2/9/2014	12/4/2015
3/15/2012	2/10/2014	12/11/2015
3/17/2012	2/27/2014	12/14/2015
3/18/2012	2/28/2014	12/19/2015
3/25/2012	3/1/2014	12/22/2015
3/28/2012	3/3/2014	12/25/2015
4/1/2012	3/4/2014	12/28/2015
4/11/2012	3/6/2014	1/5/2016
4/12/2012	3/23/2014	1/6/2016
4/13/2012	3/30/2014	1/15/2016
4/26/2012	4/1/2014	1/16/2016
10/23/2012	4/2/2014	1/18/2016
11/9/2012	4/25/2014	1/19/2016
11/17/2012	4/26/2014	1/20/2016

Notice of Violations and Intent to File Suit

ATTACHMENT A
Rain Dates, Cargill Animal Nutrition, Stockton, California

1/23/2016

1/30/2016

2/18/2016